

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF:

eChalk LLC on behalf of

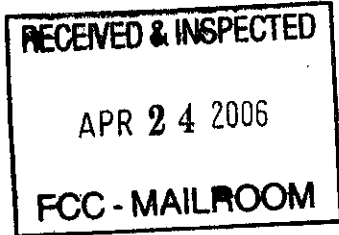
Laredo ISD

Kershaw County School District

Southside ISD

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CC Docket No. 02-6



Request for Review

eChalk, LLC respectfully requests the Federal Communications Commission (FCC) review and reverse the funding denial decisions of the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC.) eChalk specifically appeals the following funding denials, each FRN is for eChalk service (SPIN 143020189):

| | |
|-----------------------|------------------------------------|
| Applicant: | Laredo Independent School District |
| Billed Entity Number: | 141486 |
| 471 Number: | 454650 |
| FRN: | 1263303 |
| FCDL Date: | 3/09/2006 |

| | |
|-----------------------|--------------------------------|
| Applicant: | Kershaw County School District |
| Billed Entity Number: | 127121 |
| 471 Number: | 466530 |
| FRN: | 1328716 |
| FCDL Date: | 4/05/2006 |

| | |
|-----------------------|---------------------------------------|
| Applicant: | Southside Independent School District |
| Billed Entity Number: | 141547 |
| 471 Number: | 464380 |
| FRN: | 1276465 |
| FCDL Date: | 2/23/2006 |

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eChalk has previously appealed three other decisions which were denied based on the same grounds. The FCC may want to review all the appeal letters together. The appeal letters were filed on 12/28/2005 on behalf of the following applicants:

Lexington County School District 2
Billed Entity Number: 127412

Mercedes Independent School District
Billed Entity Number: 141659

Richmond County School District
Billed Entity Number: 126988

Summary:

In each funding commitment decision letter, the reason for denial is the same:

“FCC rules require that a contract for the product/services be signed and dated by both parties prior to the filing of the 471. This requirement was not met.”

eChalk is requesting an FCC review of the appeal denial based on the following arguments:

1. **Technical Compliance with the Rule:** The applicants were in full compliance with the technical aspect of the rule created by the language in Paragraph 48 of the Fifth Report and Order, FCC 04-190 (Order) released in August 2004. The language in the Order reads as follows:

“Contracts: Both beneficiaries and service providers must retain executed contracts signed and dated by both parties. All amendments and addendums to the contracts must be retained as well as agreements related to Erate between the beneficiary and the service provider, such as up front payment agreements.”

eChalk respectfully submits that the three contracts in question are fully executed, legally binding contracts that are signed and dated in accordance with the requirements of the rules. To the best of our understanding, the point of disagreement is that the eChalk contracts contain one date, the “effective

date” at the top of the contract, rather than a separate date by each signature. (See Exhibit A). Specifically, the contracts state:

“This order, made as of DATE, (“Effective Date”), for the services set forth herein constitutes a Service Order to the Master Service Agreement # XXXX between eChalk, LLC (eChalk) and SCHOOL DISTRICT.”

In addition, both parties (eChalk and the District) agree, in the Master Service Agreement, Section 9.1 that,

“This Master Services Agreement shall become effective as of the Effective Date and shall remain in force until terminated.”

In each case, the “effective date” at the top of the contract governs both signatures. In all eChalk dates, the “effective date” is the date on which the applicant actually signed the contract, rather than an arbitrary retroactive date. Further, both parties agree the contract has been awarded and goes into effect on the “effective date” and it is used as the “contract award date” listed in the form 471. This date governs both signatures and is equivalent to having a date for each signature.

There has been substantial confusion in the industry regarding the requirements of the rules, and in fact the language in the Order was later clarified by the SLD to mean “2 signatures and 2 dates” on each contract. However, this clarification was not made until the fall of 2005, after the submission of our applications. Furthermore, earlier SLD guidance specifically relating to this rule mentions the need for 2 signatures, but does not specify the need for 2 separate dates. Until the language was clarified by the SLD in the fall of 2005, it was open to interpretation. eChalk respectfully submits that the contracts in question satisfy the requirements of the rule as written in the Order, and as the rule was clarified by written training materials distributed by the SLD.

On September 27, 2004, shortly following the release of the Order, eChalk staff attended the Erate Train the Trainer sessions organized by the SLD staff.

The “new” contract rules put forth in the Fifth Report and Order were discussed in 3 presentations. One presentation simply reiterated the language from the order, stating that contracts needed to be “signed and dated by both parties” with no further clarification (*See Exhibit B*). A second presentation given by Cynthia Schultz, entitled “E-rate from the Service Provider Perspective” specifies the need for 2 signatures, but not 2 dates (*See Exhibit C*). Slide number 12 reads:

“The FCC Fifth Report and Order requires both the applicant and the service provider to sign the contract prior to the filing of the form 471”

This exact statement is repeated on slide 32 in another presentation given by John Noran, entitled “Erate for Beginners.” (*See Exhibit D*) As service providers, this is the guidance we were given as it related to the release of the Order. After a thorough review of all of the presentations, none mentioned that 2 dates must exist on each contract. Likewise, nowhere on the SLD website or any other written communication coming out of the SLD or the FCC mentioned the need for 2 separate dates. The experts charged with explaining and clarifying rules to program participants, focused on the need for 2 signatures on each contract, but never mentioned the need for two dates. eChalk representatives attended the Train-the-Trainer sessions and based on the information given, and a thorough reading of the Order, coupled with our understanding of all other Erate rules and standard contract law, saw no conflict with the layout of this contract and the current interpretation of the rules as they were being presented in this training session, and through the FCC documents.

The language governing contract signatures and dates in the Order was not clarified until the fall of 2005. At his time, in the SLD trainings, on its website and in other formal written communications, the rule was clarified to mean that contracts need 2 separate dates and came to be known informally as the “2 signature, 2 date rule.” Until then, there was no specific rule stating that there needed to be two separate dates – and the contracts under appeal by

eChalk were signed by the parties and meet the requirements of being “signed and dated by both parties.”

2. **Compliance with the Intent and Spirit of the Rule:** The applicants were in compliance with the intent and spirit of the rules: a legally binding, fully executed contract was in place prior to the filing of the form 471. The intent of the rule requiring contracts to be “signed and dated by both parties” is to ensure that applicants are awarding contracts and entering into legally binding agreements prior to filing a form 471, thereby meeting competitive bidding requirements and preventing fraud waste and abuse of the USAC funds. The language was written to ensure vendors and applicants comply with standard contract laws and obtain legally binding contracts – rather than an informal quote, or some other form of documentation that would not stand up to legal review – prior to filing the form 471.

In this case, each of the three contracts are fully executed, legally binding contracts, and were awarded prior to the filing of the form 471. eChalk’s standard operating procedure requires that the contract is transmitted to the customer containing the signature of the eChalk Chief Operating Officer. When the customer executes the contract, the customer enters the “effective date” on the day that the agreement is executed. As soon as the effective date is entered, and the two signatures are in place, the contract is legally binding and considered to be “awarded” for the purposes of Erate.

In each of the cases listed above, the effective date on the contract is prior to the date on which the forms 471 were filed, and in advance of the Erate form 471 deadline. (*See Exhibit A*). As further evidence of compliance with the deadline requirements, eChalk has attached notarized statements from each applicant testifying that they did, in fact, sign the document on the “effective date” and that eChalk had fully executed the document prior to their receipt and execution of the same agreement. (*See Exhibit E*)

Conclusion:

eChalk is a small business that has been working closely with the Erate program nearly since its inception. Most of our customers have used Erate funding to help cover the cost of our service and have found the program to be very useful. However, it is widely agreed that the myriad rules can often be confusing and interpreted in more than one way. While there is documentation and communication from the SLD that is designed to help clarify the rules, this communication is not always clear or consistent. eChalk endeavors to be fully informed of and understand all rules and regulations in order to remain in compliance. In addition to regular attendance at training sessions, participation in the vendor conference calls, and regularly checking the website for updates and news, eChalk has dedicated staff assigned to focus exclusively on the Erate program. Based on our reading and understanding of the rule put forth in the Order, and the guidance we received from the SLD, eChalk respectfully submits that the three contracts in question are in compliance with the rule.

Additionally, it is without question that the three contracts under consideration met the intent and purpose of the rules. Legally binding, fully executed contracts were awarded prior to the filing of the Forms 471 and in advance of any deadlines.

We respectfully request that the SLD's funding denial decisions should be reversed, and full funding should be granted in a timely manner.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Daniel Watts', with a stylized flourish at the end.

Daniel Watts
Chief Operating Officer
eChalk, LLC
199 Water Street, 16th Floor
New York, NY 10004
Tel: 212-809-8400
Fax: 212-809-8500
E: dwatts@echalk.com

EXHIBIT A

eCHALK SERVICE ORDER

This order, made as of 2/7/05 ("Effective Date"), for the services set forth herein constitutes a Service Order to the Master Services Agreement #04-1981 between eChalk, LLC ("eChalk") and Southside ISD (the "District").

District Contact Information:

Southside ISD
1460 Martinez Losoya Road
San Antonio, Texas 78221
210-882-1600 x1826

eChalk Contact Information:

eChalk, LLC
26 Broadway, Suite 941
New York, NY 10004
212-809-8400
212-809-8500 (fax)

Ordered Services and Fees eChalk agrees to provide the District with the following services ("Ordered Services") which are detailed in the Description of Services document. The District agrees to pay eChalk the fees set forth below for the Ordered Services.²

| Service Description | Unit | Quantity | Price per Unit | Years | Total Cost |
|--|-------|----------|----------------|--------------|---------------|
| Standard Email & Web Hosting Services (Eligible for E-Rate Discounts) | | | | | |
| Installation (Sites, Teachers and Staff) | Sites | 2.0 | \$950.00 | One-time fee | \$1,900.00 |
| Installation (Students) | Sites | 2.0 | \$950.00 | One-time fee | \$1,900.00 |
| Maintenance | Sites | 9.0 | \$1,425.00 | 1 yr | \$12,825.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 7000.0 | \$7.50 | 1 yr | \$53,200.00 |
| On-Site Training (E-Rate Eligible) * | Days | 2.0 | \$1,425.00 | One-time fee | \$2,850.00 |
| Subtotal for Standard Email & Web Hosting Services | | | | | \$72,675.00 |
| E-rate Discount (based on a reported discount rate of 87%) | | | | | (\$63,227.25) |
| Standard File Storage Services** (Not Eligible for E-Rate Discounts) | | | | | |
| Installation (Sites, Teachers and Staff) | Sites | 2.0 | \$50.00 | One-time fee | \$100.00 |
| Installation (Students) | Sites | 2.0 | \$50.00 | One-time fee | \$100.00 |
| Maintenance | Sites | 9.0 | \$75.00 | 1 yr | \$675.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 7000.0 | \$0.40 | 1 yr | \$2,800.00 |
| On-Site Training (E-Rate Eligible) * | Days | 2.0 | \$75.00 | One-time fee | \$150.00 |
| Subtotal for Standard File Storage Services | | | | | \$3,825.00 |
| Total Cost | | | | | \$76,500.00 |
| Total Cost to Southside ISD | | | | | \$13,272.75 |

*On-site email administrator training is provided during setup to those individuals responsible for maintaining the eChalk system. This is not end-user training.

**eChalk has attributed 5% of the costs of its system to the file storage component which is not eligible for E-rate discounts.

Service Start Date: 7/1/2005

Service End Date: 6/30/2006³

On behalf of the District:

M. A. Herrick, Sept.
Signature
M. A. Herrick
Name
Superintendent
Title

On behalf of eChalk:

Daniel C. Watts
Signature
Daniel C. Watts
Name
Chief Operating Officer
Title

¹In the event of a conflict among the Master Services Agreement, the Service Order(s), and any terms and conditions contained in any purchase order issued by the District, the order of priority for purposes of interpretation shall be the Master Services Agreement and then this Service Order. Any terms and conditions contained in a purchase order issued by the District shall not be controlling.

²Such amount does not include sales, value added or similar taxes of any nature. The District shall pay applicable taxes when invoiced by eChalk or shall supply appropriate tax exemption certificates in a form satisfactory to eChalk.

³This Service Order shall renew for additional one (1) year terms upon mutual written agreement of both parties.

E-rate Contingency: Both parties acknowledge and agree that the District's obligation to purchase the services set forth in this Service Order is contingent upon the Schools and Libraries Division of the Universal Service Administrative Company issuing to the District a Funding Commitment Decision Letter in support of the purchase of those services. Accordingly, eChalk shall delay the delivery of such services upon request by the District until the District requests delivery pursuant to its receipt of E-rate funding support.

eCHALK MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT, made as of 11/18/04 ("Effective Date"), by and between eCHALK, LLC ("eChalk") with its principal offices at 26 Broadway, Suite 941, New York, NY 10004 and Southside Independent School District (the "District") with its principal offices at 1460 Martinez Losoya Rd., San Antonio, Texas 78221 sets forth the mutual understandings of eChalk and the District with respect to the delivery by eChalk and the purchase by the District of the Web-based communication services as set forth in the then current service order (each a "Service Order" and collectively, the "Service Orders"), the first of which is attached hereto (the "Services"). The "Agreement" between the parties shall consist of the terms and conditions set forth in this Master Services Agreement, the Service Orders, the Service Level Agreement (which will either be attached to this Agreement or can be found on the eChalk website, and may be amended from time to time by eChalk) and any other agreements attached hereto or subsequently signed by the parties and that reference this Master Services Agreement (collectively, the "Agreement"). In the event of any conflict between the terms and conditions of this Master Services Agreement and any subsequent agreement between the parties, the Master Services Agreement shall take precedence.

1. License.

- 1.1 **Grant.** eChalk hereby grants to the District a non-exclusive, non-transferable, limited license to use the Services for the Term (as defined below), subject to the terms and conditions set forth in this Agreement. eChalk hereby grants to the District the right to permit Users (as defined below) to use the Services in accordance with the terms of the District's permitted use under the Agreement.
- 1.2 **Limitations to Grant.** Except as set forth herein or in any attachment to this Agreement, the District shall not use the Services in any manner to provide Web-based communication Services to any third party, nor shall the District sublicense, transfer or distribute the Services, or any portion thereof, to any third party.
- 1.3 **Reservation of Rights.** eChalk reserves all other rights to the Services, including without limitation the right to access and modify the Services for training, maintenance, upgrades, and security purposes.

2. Set-up.

- 2.1 **eChalk's Responsibilities.** eChalk shall set up and deliver to the District the Services for launch in the number of schools in the District set forth in the Service Order (the "Schools") on a date mutually agreeable to the parties.
- 2.2 **The District's Responsibilities.** The District shall provide eChalk with all information needed to develop and launch the Services and shall assign a "Site Manager" who shall be responsible for coordinating the set-up of the Services.

3. Proprietary Rights.

- 3.1 **District Property.** The Service shall allow the District and the District's administrators, teachers, students, and the parents or legal guardians of District students for the Schools (collectively the "Users") to post User information and content on the District's and School's eChalk Websites (collectively the "District Property"). The District shall retain all rights to the District Property.
- 3.2 **eChalk's Property.** Except for the District Property, all aspects of the Services, in whole and in part, including but not limited to the look and feel of the eChalk template pages, all eChalk source code, and all intellectual property and/or proprietary rights therein, including without limitation, copyright, moral rights, patent rights (including patent applications and disclosures), trademarks, rights of priority, publicity rights, and trade secret rights, recognized in any country or jurisdiction in the world, are the sole and exclusive property of eChalk ("eChalk Property"). The eChalk Property shall include all changes and additions to the Services and all derivative works thereof.
- 3.3 **Proprietary Notices.** The District shall not delete or in any manner alter the copyright, trademark, or other proprietary notices of eChalk and its licensors, if any, appearing on the Services as delivered to the District. The District shall reproduce such notices on all copies it makes of the Services.
- 3.4 **Obligation to Protect.** The District shall use reasonable efforts to protect eChalk's proprietary rights to the Services and to cooperate in eChalk's efforts to protect its proprietary rights. The District promptly shall notify eChalk of any known or suspected breach of eChalk's proprietary rights to the Services that may come to the attention of the District.

4. **User Information.** eChalk shall not disclose to any third party any personal information that would permit identification of an individual, without obtaining the prior written consent of the District, or if eChalk's reasonable judgment it is required by law, the permission of any other party, unless so required by a court or administrative authority of competent jurisdiction. eChalk reserves the right, in accordance with applicable law, to disclose aggregate usage, demographic, and other information relating to usage by the Schools or the District and its Users of the Services for the purpose of: (i) improving the product; (ii) informing the

District and any school(s) of their use of the Services to improve adoption of the Services within the District or any School; or (iii) demonstrating usage of the Services to other schools (potential clients) and eChalk investors. The District hereby grants eChalk the right to use quotes from the District or any School faculty and staff regarding the Services for the limited purpose of marketing and public relations. However, eChalk shall not publish any press releases regarding the District or any School's use of the Services or quotes from the District or any School faculty or staff without obtaining the prior written consent of the District. eChalk has adopted and conducts its business in accordance with a privacy policy with respect to the use of personal information. The eChalk privacy policy is available on-line at the following URL: www.echalk.com/privacy_policy.html.

5. **Payment.** The District hereby agrees to pay eChalk the amounts set forth in the Service Order. Payment shall be made to eChalk within (30) days of the invoice date. All overdue payments will bear interest at the rate of 10% per annum or at the maximum rate allowable by law, whichever is lower.

6. Users.

- 6.1 **Acceptable Use.** Before launch of the Services, the District shall be responsible for adopting reasonable guidelines regarding use of the Services in the form of an "Acceptable Use Policy" that contains restrictions and obligations upon Users that encourage proper use and censure activities that violate applicable laws and regulations and as of the launch date shall make available to all Users such Acceptable Use Policy on the District's and the School's eChalk Websites. Upon request, eChalk shall provide the District with guidelines to assist the District in developing its own Acceptable Use Policy.

- 6.2 **User Behavior.** The District hereby acknowledges and agrees that eChalk is not responsible for monitoring use of the Services and/or for enforcing compliance with the Acceptable Use Policy and all applicable laws and regulations. The District shall indemnify and hold harmless eChalk from any and all claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages by any third party (including reasonable attorneys' fees and costs of litigation) arising out of any Users' use of the Services pursuant to this Agreement. The District shall maintain during the Term hereof reasonable insurance protection for claims arising out of Users' use of the Services.

7. **Compliance by Schools.** The District shall cause each of the Schools to be bound by and to comply with the terms and conditions of this Agreement.

8. Representations. Each of eChalk and the District represents and warrants that:

- (a) Such party has, and will have, the full power, authority and legal right to enter into and perform fully its obligations under this Agreement;
- (b) Neither the execution and delivery of this Agreement nor the consummation of transactions contemplated hereby will (i) violate any provision of the charter or by-laws of such party, or any laws, ordinances, rules, regulations, codes or policies to which such party is subject or (ii) conflict with, result in breach or violation of, constitute a default under, or require any notice under any agreement to which such party is party or by which it is bound or to which any of its assets is subject;
- (c) Such party shall comply at its own expense with all applicable laws, ordinances, rules, regulation, codes and policies in connection with its performance under this Agreement; and
- (d) Such party has all rights and authorizations necessary to grant the rights and licenses set forth herein.

9. Terms/Termination.

- 9.1 **Term.** This Master Services Agreement shall become effective as of the Effective Date and shall remain in force until terminated.

9.2 Termination.

- (a) This Master Services Agreement may be terminated by either party, at any time if the other party commits a material breach of this Agreement that remains uncured for a period of thirty (30) days following written notice thereof.
- (b) eChalk may terminate this Master Services Agreement upon thirty (30) days' prior written notice to the District (i) if the District fails to pay any amounts owed to eChalk when due, or (ii) at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is obligated to pay eChalk fees for the Services to be provided.
- (c) The District may terminate this Master Services Agreement upon thirty (30) days' prior written notice to eChalk at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is bound to pay eChalk fees for the Services provided.

(d) This Master Services Agreement may be terminated at any time by mutual, written agreement of eChalk and the District.

10. **Disclaimer Of Warranty.** The District hereby agrees and acknowledges that the Services are provided on an "as is" basis without any express or implied warranty, guarantee, or other assurance of quality, conformity with specifications, reliability or functionality by any eChalk Party (as defined below). eChalk makes no representation or warranty as to the success of the District's or any of the Schools' use of the Services. "eChalk Party" means eChalk or any of its directors, officers, employees, agents, contractors, affiliates, information providers, licensors, governmental authorities or other suppliers providing any data, information, news, messages, opinions or other materials relating to the Services. EXCEPT AS SET FORTH IN SECTION 8, ECHALK HEREBY DISCLAIMS WITH RESPECT TO THE SERVICES, UPDATES, ENHANCEMENTS OR OTHER PRODUCTS OR SERVICES PROVIDED OR CONTEMPLATED HEREUNDER ALL WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

11. **Limitation Of Liability.**

- 11.1 **Acts or Omissions by the District, the Schools and its Users.** The District hereby releases eChalk from all obligations and liability relating to any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from or relating to (i) the District's, Schools' or Users' use of the Services and/or (ii) the District's or the Schools' conduct of its business.

- 11.2 **eChalk's Liability.** The District agrees that no eChalk Party shall be liable in any way to the District or any School, any User or any other person for any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from: (i) any inaccuracy, error or delay in, or omission of, or any interruption of the transmission or delivery of, the Services, in each case; or (ii) any party's inability to use the Services or any other computer software or hardware; or (iii) any party's action or failure to act in accordance with the Acceptable Use Policy or any applicable laws, regulations or policies regarding the Services.

- 11.3 **Damages.** The District agrees that eChalk shall not be liable for any consequential, special, incidental, indirect, or punitive damages, even if eChalk has been advised of the possibility of such damages and regardless of whether such damages were or reasonably could have been foreseen. Notwithstanding the foregoing, eChalk shall be liable to the District for any loss to the extent it is directly attributable to the gross negligence or willful misconduct of any eChalk Party. In no event shall eChalk's total cumulative liability to the District and to the Schools collectively, exceed the maximum amount paid by the District to eChalk under the Service Order.

12. **Service Orders.** Each Service Order shall be subject to the following terms and conditions in addition to any other terms and conditions set forth in the Service Order.

- 12.1 **Changes to Service Orders.** During the term of a Service Order, the District shall have the right to request changes to the ordered services, the number of Schools at which the Services will be offered and the number of user subscriptions. eChalk shall, within a reasonable time not to exceed four (4) business days after receipt of a written change proposal, inform District of the cost of the proposed changes. Any such agreement regarding additional or different services, schools, user subscriptions and compensation shall be set forth in a signed, written amendment to the Service Order or a Law Service Order.

- 12.2 **Termination of Service Orders.** A Service Order may be terminated at any time by mutual written agreement by eChalk and the District. If either party fails to cure any breach of its obligations to a Service Order within thirty (30) days following receipt of written notice thereof from the other party, then such other party may terminate the Service Order by providing the defaulting party with written notice of termination. eChalk may terminate a Service Order upon prior written notice if the District fails to pay the amounts due thereunder within thirty (30) days of receipt of an invoice.

- 12.3 At any time when a Service Order is not in force eChalk shall be under no obligation to provide Services until the parties enter into a new Service Order or other binding agreement pursuant to which the District is obligated to pay eChalk for Services.

13. **Governing Law; Jurisdiction.** This Agreement shall be construed and governed by the laws of the State of New York without regard to conflict of law principles. The parties hereby consent to jurisdiction and venue in any federal or state court of competent jurisdiction located in the County of New York, State of New York, for the adjudication of any disputes under this Agreement.

14. **Notice.** All notices in connection with this Agreement shall be deemed given as of the day they are sent by electronic transmission, fax or commercial courier to the other party at such address or fax number as set forth in the then current Service Order.

15. **Further Assurances.** The parties shall, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by the other party, to confirm and ensure the parties' respective rights and interests contemplated by or provided in this Agreement. The parties shall act in good faith in the performance of their obligations under this Agreement.

16. **Force Majeure.** Performance of any obligation hereunder shall be excused so long as prevented by an act of God, act of public enemy, fire or other casualty, labor dispute, electrical shortage, failure of communications or common carrier, equipment or software malfunction or other circumstances reasonably beyond a party's control and that it cannot circumvent using its best efforts ("Force Majeure"). Any party so delayed in its performance immediately shall attempt to notify the other party and shall describe at a reasonable level of detail the Force Majeure circumstances causing such delay. Upon delivery of such notice, the obligations of the party giving such notice, to the extent affected by the Force Majeure event, shall be suspended during, but not longer than, the continuance of the Force Majeure event.

17. **Severability.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

18. **Modifications.** This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

19. **No Joint Venture.** Nothing in this Agreement shall constitute either of the parties as members of any partnership, joint venture, association or similar entity.

20. **Assignment.** Except as otherwise set forth herein, the District may not assign any of its rights or delegate any of its duties or obligations under this Agreement to any third party without the written consent of eChalk except to an affiliate or pursuant to any merger or consolidation. eChalk may assign its rights or delegate its duties or obligations under this Agreement freely. This Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

21. **Survival.** Sections 3.1, 3.2, 4, 5, 6.2, 8, 10, 11, 13, 14 and this Section 21 shall survive termination or expiration of this Agreement.

The undersigned have acknowledged and agreed to the foregoing terms as of the date first written above:

On behalf of the District:

Mand Harrick
Signature

Mand Harrick
Name

Superintendent
Title

On behalf of eChalk:

Daniel C. Watts
Signature

Daniel C. Watts
Name

Chief Operating Officer
Title

eCHALK SERVICE ORDER

This order, made as of 2/2/2005 ("Effective Date"), for the services set forth herein constitutes a Service Order to the Master Services Agreement #04-1972 between eChalk, LLC ("eChalk") and Kershaw County School District (the "District").

District Contact Information:

Kershaw County School District
1301 DuBose Court
Camden, South Carolina 29020
803 432-8418

eChalk Contact Information:

eChalk, LLC
26 Broadway, Suite 941
New York, NY 10004
212-809-8400
212-809-8500 (fax)

Ordered Services and Fees. eChalk agrees to provide the District with the following services ("Ordered Services") which are detailed in the Description of Services document. The District agrees to pay eChalk the fees set forth below for the Ordered Services.¹

| Service Description | Units | Quantity | Price per Unit | Year | Total Cost |
|--|-------|----------|----------------|--------------|---------------|
| Standard Email & Web Hosting Services (Eligible for E-Rate Discounts) | | | | | |
| Maintenance | Sites | 21.0 | \$1,425.00 | 1 yr | \$29,925.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 2400.0 | \$7.60 | 1 yr | \$18,240.00 |
| Public Class View | Sites | 18.0 | \$950.00 | 1 yr | \$17,100.00 |
| On-Site Training (E-Rate Eligible) * | Days | 5.0 | \$1,425.00 | One-time fee | \$7,125.00 |
| Discounted User Accounts | Users | 1400.0 | \$7.60 | 1 yr | (\$10,640.00) |
| Subtotal for Standard Email & Web Hosting Services | | | | | \$81,750.00 |
| E-rate Discount (based on a reported discount rate of 72%) | | | | | (\$44,460.00) |
| Standard File Storage Services** (Not Eligible for E-Rate Discounts) | | | | | |
| Maintenance | Sites | 21.0 | \$75.00 | 1 yr | \$1,575.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 2400.0 | \$0.40 | 1 yr | \$960.00 |
| Public Class View | Sites | 18.0 | \$50.00 | 1 yr | \$900.00 |
| On-Site Training (E-Rate Eligible) * | Days | 5.0 | \$75.00 | One-time fee | \$375.00 |
| Discounted User Accounts | Users | 1400.0 | \$0.40 | 1 yr | (\$560.00) |
| Subtotal for Standard File Storage Services | | | | | \$3,250.00 |
| Total Cost | | | | | \$65,000.00 |
| Total Cost to Kershaw County School District | | | | | \$20,540.00 |

*On-site email administrator training is provided during setup to those individuals responsible for maintaining the eChalk system. This is not end-user training.

**eChalk has attributed 5% of the costs of its system to the file storage component which is not eligible for E-rate discounts.

Service Start Date: 7/1/2005

Service End Date: 6/30/2006³

On behalf of the District:

Herbert Berg
Signature
HERBERT BERG
Name
SUPERINTENDENT
Title

On behalf of eChalk:

Daniel C. Watts
Signature
Daniel C. Watts
Name
Chief Operating Officer
Title

¹In the event of a conflict among the Master Services Agreement, the Service Order(s), and any terms and conditions contained in any purchase order issued by the District, the order of priority for purposes of interpretation shall be the Master Services Agreement and then this Service Order. Any terms and conditions contained in a purchase order issued by the District shall not be controlling.

²Such amount does not include sales, value added or similar taxes of any nature. The District shall pay applicable taxes when invoiced by eChalk or shall supply appropriate tax exemption certificates in a form satisfactory to eChalk.

³This Service Order shall renew for additional one (1) year terms upon mutual written agreement of both parties.

E-rate Contingency: Both parties acknowledge and agree that the District's obligation to purchase the services set forth in this Service Order is contingent upon the Schools and Libraries Division of the Universal Service Administrative Company issuing to the District a Funding Commitment Decision Letter in support of the purchase of those services. Accordingly, eChalk shall delay the delivery of such services upon request by the District until the District requests delivery pursuant to its receipt of E-rate funding support.

eCHALK MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT, made as of 11-1-04 ("Effective Date"), by and between eCHALK, LLC ("eChalk") with its principal offices at 26 Broadway, Suite 941, New York, NY 10004 and Kershaw (the "District") with its principal offices at 1301 Dubose Ct, Camden, South Carolina 29020 sets forth the mutual understandings of eChalk and the District with respect to the delivery by eChalk and the purchase by the District of the Web-based communication services as set forth in the then current service order (each a "Service Order" and collectively, the "Service Orders"), the first of which is attached hereto (the "Services"). The "Agreement" between the parties shall consist of the terms and conditions set forth in this Master Services Agreement, the Service Order, the Service Level Agreement (which will either be attached to this Agreement or can be found on the eChalk website, and may be amended from time to time by eChalk) and any other agreements attached hereto or subsequently signed by the parties and that reference this Master Services Agreement (collectively, the "Agreement"). In the event of any conflict between the terms and conditions of this Master Services Agreement and any subsequent agreement between the parties, the Master Services Agreement shall take precedence.

1. License.

- 1.1 **Grant.** eChalk hereby grants to the District a non-exclusive, non-transferable, limited license to use the Services for the Term (as defined below), subject to the terms and conditions set forth in this Agreement. eChalk hereby grants to the District the right to permit Users (as defined below) to use the Services in accordance with the terms of the District's permitted use under the Agreement.
- 1.2 **Limitations to Grant.** Except as set forth herein or in any attachment to this Agreement, the District shall not use the Services in any manner to provide Web-based communication Services to any third party, nor shall the District sublicense, transfer or distribute the Services, or any portion thereof, to any third party.
- 1.3 **Reservation of Rights.** eChalk reserves all other rights to the Services, including without limitation the right to access and modify the Services for training, maintenance, upgrades, and security purposes.

2. Set-up.

- 2.1 **eChalk's Responsibilities.** eChalk shall set up and deliver to the District the Services for launch in the number of schools in the District set forth in the Service Order (the "Schools") on a date mutually agreeable to the parties.
- 2.2 **The District's Responsibilities.** The District shall provide eChalk with all information needed to develop and launch the Services and shall assign a "Site Manager" who shall be responsible for coordinating the set-up of the Services.

3. Proprietary Rights.

- 3.1 **District Property.** The Service shall allow the District and the District's administrators, teachers, students, and the parents or legal guardians of District students for the Schools (collectively the "Users") to post User information and content on the District's and School's eChalk Websites (collectively the "District Property"). The District shall retain all rights to the District Property.
- 3.2 **eChalk's Property.** Except for the District Property, all aspects of the Services, in whole and in part, including but not limited to the look and feel of the eChalk template pages, all eChalk source code, and all intellectual property and/or proprietary rights therein, including without limitation, copyright, moral rights, patent rights (including patent applications and disclosures), trademarks, rights of priority, publicity rights, and trade secret rights, recognized in any country or jurisdiction in the world, are the sole and exclusive property of eChalk ("eChalk Property"). The eChalk Property shall include all changes and additions to the Services and all derivative works thereof.
- 3.3 **Proprietary Notices.** The District shall not delete or in any manner alter the copyright, trademark, or other proprietary notices of eChalk and its licensors, if any, appearing on the Services as delivered to the District. The District shall reproduce such notices on all copies it makes of the Services.
- 3.4 **Obligation to Protect.** The District shall use reasonable efforts to protect eChalk's proprietary rights to the Services and to cooperate in eChalk's efforts to protect its proprietary rights. The District promptly shall notify eChalk of any known or suspected breach of eChalk's proprietary rights to the Services that may come to the attention of the District.

4. **User Information.** eChalk shall not disclose to any third party any personal information that would permit identification of an individual, without obtaining the prior written consent of the District, or if eChalk's reasonable judgment it is required by law, the permission of any other party, unless so required by a court or administrative authority of competent jurisdiction. eChalk reserves the right, in accordance with applicable law, to disclose aggregate usage, demographic, and other information relating to usage by the Schools or the District and its Users of the Services for the purpose of: (i) improving the product; (ii) informing the

District and any school(s) of their use of the Services to improve adoption of the Services within the District or any School; or (iii) demonstrating usage of the Services to other schools (potential clients) and eChalk investors. The District hereby grants eChalk the right to use quotes from District or any School faculty and staff regarding the Services for the limited purpose of marketing and public relations. However, eChalk shall not publish any press releases regarding the District or any School's use of the Services or quotes from the District or any School faculty or staff without obtaining the prior written consent of the District. eChalk has adopted and conducts its business in accordance with a privacy policy with respect to the use of personal information. The eChalk privacy policy is available on-line at the following URL: www.echalk.com/privacy_policy.html.

5. **Payment.** The District hereby agrees to pay eChalk the amounts set forth in the Service Order. Payment shall be made to eChalk within (30) days of the invoice date. All overdue payments will bear interest at the rate of 10% per annum or at the maximum rate allowable by law, whichever is lower.

6. Users.

- 6.1 **Acceptable Use.** Before launch of the Services, the District shall be responsible for adopting reasonable guidelines regarding use of the Services in the form of an "Acceptable Use Policy" that contains restrictions and obligations upon Users that encourage proper use and condemn activities that violate applicable laws and regulations and as of the launch date shall make available to all Users such Acceptable Use Policy on the District's and the School's eChalk Websites. Upon request, eChalk shall provide the District with guidelines to assist the District in developing its own Acceptable Use Policy.

- 6.2 **User Behavior.** The District hereby acknowledges and agrees that eChalk is not responsible for monitoring use of the Services and/or for enforcing compliance with the Acceptable Use Policy and all applicable laws and regulations. The District shall indemnify and hold harmless eChalk from any and all claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages by any third party (including reasonable attorneys' fees and costs of litigation) arising out of any Users' use of the Services pursuant to this Agreement. The District shall maintain during the Term hereof reasonable insurance protection for claims arising out of Users' use of the Services.

7. **Compliance by Schools.** The District shall cause each of the Schools to be bound by and to comply with the terms and conditions of this Agreement.

8. Representations. Each of eChalk and the District represents and warrants that:

- (a) Such party has, and will have, the full power, authority and legal right to enter into and perform fully its obligations under this Agreement;
- (b) Neither the execution and delivery of this Agreement nor the consummation of transactions contemplated hereby will (i) violate any provision of the charter or by-laws of such party, or any laws, ordinances, rules, regulations, codes or policies to which such party is subject or (ii) conflict with, result in breach or violation of, constitute a default under, or require any notice under any agreement to which such party is party or by which it is bound or to which any of its assets is subject;
- (c) Such party shall comply at its own expense with all applicable laws, ordinances, rules, regulation, codes and policies in connection with its performance under this Agreement; and
- (d) Such party has all rights and authorizations necessary to grant the rights and licenses set forth herein.

9. Term; Termination.

- 9.1 **Term.** This Master Services Agreement shall become effective as of the Effective Date and shall remain in force until terminated.

9.2 Termination.

- (a) This Master Services Agreement may be terminated by either party, at any time if the other party commits a material breach of this Agreement that remains uncured for a period of thirty (30) days following written notice thereof.
- (b) eChalk may terminate this Master Services Agreement upon thirty (30) days' prior written notice to the District (i) if the District fails to pay any amounts owed to eChalk when due, or (ii) at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is obligated to pay eChalk fees for the Services to be provided.
- (c) The District may terminate this Master Services Agreement upon thirty (30) days' prior written notice to eChalk at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is bound to pay eChalk fees for the Services provided.

(d) This Master Services Agreement may be terminated at any time by mutual, written agreement of eChalk and the District.

10. **Disclaimer Of Warranty.** The District hereby agrees and acknowledges that the Services are provided on an "as is" basis without any express or implied warranty, guarantee, or other assurance of quality, conformity with specifications, reliability or functionality by any eChalk Party (as defined below). eChalk makes no representation or warranty as to the success of the District's or any of the Schools' use of the Services. "eChalk Party" means eChalk or any of its directors, officers, employees, agents, contractors, affiliates, information providers, licensors, governmental authorities or other suppliers providing any data, information, news, messages, opinions or other materials relating to the Services. EXCEPT AS SET FORTH IN SECTION 8, ECHALK HEREBY DISCLAIMS WITH RESPECT TO THE SERVICES, UPDATES, ENHANCEMENTS OR OTHER PRODUCTS OR SERVICES PROVIDED OR CONTEMPLATED HEREUNDER ALL WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.
11. **Limitation Of Liability.**
 - 11.1 **Acts or Omissions by the District, the Schools and its Users.** The District hereby releases eChalk from all obligations and liability relating to any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from or relating to (i) the District's, Schools' or Users' use of the Services and/or (ii) the District's or the Schools' conduct of its business.
 - 11.2 **eChalk's Liability.** The District agrees that no eChalk Party shall be liable in any way to the District or any School, any User or any other person for any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from: (i) any inaccuracy, error or delay in, or omission of, or any interruption of the transmission or delivery of, the Services, in each case; or (ii) any party's inability to use the Services or any other computer software or hardware; or (iii) any party's action or failure to act in accordance with the Acceptable Use Policy or any applicable laws, regulations or policies regarding the Services.
 - 11.3 **Damages.** The District agrees that eChalk shall not be liable for any consequential, special, incidental, indirect, or punitive damages, even if eChalk has been advised of the possibility of such damages and regardless of whether such damages were or reasonably could have been foreseen. Notwithstanding the foregoing, eChalk shall be liable to the District for any loss to the extent it is directly attributable to the gross negligence or willful misconduct of any eChalk Party. In no event shall eChalk's total cumulative liability to the District and to the Schools collectively, exceed the maximum amount paid by the District to eChalk under the Service Order.
12. **Service Orders.** Each Service Order shall be subject to the following terms and conditions in addition to any other terms and conditions set forth in the Service Order.
 - 12.1 **Changes to Service Orders.** During the term of a Service Order, the District shall have the right to request changes to the ordered services, the number of Schools at which the Services will be offered and the number of user subscriptions. eChalk shall, within a reasonable time not to exceed four (4) business days after receipt of a written change proposal, inform District of the cost of the proposed changes. Any such agreement regarding additional or different services, schools, user subscriptions and compensation shall be set forth in a signed, written amendment to the Service Order or a Law Service Order.
 - 12.2 **Termination of Service Orders.** A Service Order may be terminated at any time by mutual written agreement by eChalk and the District. If either party fails to cure any breach of its obligations to a Service Order within thirty (30) days following receipt of written notice thereof from the other party, then such other party may terminate the Service Order by providing the defaulting party with written notice of termination. eChalk may terminate a Service Order upon prior written notice if the District fails to pay the amounts due thereunder within thirty (30) days of receipt of an invoice.
 - 12.3 At any time when a Service Order is not in force eChalk shall be under no obligation to provide Services until the parties enter into a new Service Order or other binding agreement pursuant to which the District is obligated to pay eChalk for Services.
13. **Governing Law; Jurisdiction.** This Agreement shall be construed and governed by the laws of the State of New York without regard to conflict of law principles. The parties hereby consent to jurisdiction and venue in any federal or state court of competent jurisdiction located in the County of New York, State of New York, for the adjudication of any disputes under this Agreement.
14. **Notice.** All notices in connection with this Agreement shall be deemed given as of the day they are sent by electronic transmission, fax or commercial courier to the other party at such address or fax number as set forth in the then current Service Order.

15. **Further Assurance.** The parties shall, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by the other party, to confirm and ensure the parties' respective rights and interests contemplated by or provided in this Agreement. The parties shall act in good faith in the performance of their obligations under this Agreement.
16. **Force Majeure.** Performance of any obligation hereunder shall be excused so long as prevented by an act of God, act of public enemy, fire or other casualty, labor dispute, electrical shortage, failure of communications or common carrier, equipment or software malfunction or other circumstances reasonably beyond a party's control and that it cannot circumvent using its best efforts ("Force Majeure"). Any party so delayed in its performance immediately shall attempt to notify the other party and shall describe at a reasonable level of detail the Force Majeure circumstances causing such delay. Upon delivery of such notice, the obligations of the party giving such notice, to the extent affected by the Force Majeure event, shall be suspended during, but not longer than, the continuance of the Force Majeure event.
17. **Severability.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected thereby.
18. **Modifications.** This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
19. **No Joint Venture.** Nothing in this Agreement shall constitute either of the parties as members of any partnership, joint venture, association or similar entity.
20. **Assignment.** Except as otherwise set forth herein, the District may not assign any of its rights or delegate any of its duties or obligations under this Agreement to any third party without the written consent of eChalk except to an affiliate or pursuant to any merger or consolidation. eChalk may assign its rights or delegate its duties or obligations under this Agreement freely. This Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.
21. **Survival.** Sections 3.1, 3.2, 4, 5, 6.2, 8, 10, 11, 13, 14 and this Section 21 shall survive termination or expiration of this Agreement.

The undersigned have acknowledged and agreed to the foregoing terms as of the date first written above:

On behalf of the District:

Signature Linda L. Shaylor
 Name LINDA L. SHAYLOR
 Title DIRECTOR, INSTRUCTIONAL TECHNOLOGY

On behalf of eChalk:

Signature Daniel C. Watts
 Name Daniel C. Watts
 Title Chief Operating Officer

EXHIBIT A

eCHALK SERVICE ORDER

This order, made as of 2/7/05 ("Effective Date"), for the services set forth herein constitutes a Service Order to the Master Services Agreement #03-1656 between eChalk, LLC ("eChalk") and Laredo ISD (the "District").

District Contact Information:

Laredo ISD
1701 Zaragoza Street
Laredo, Texas 78040
(956) 795-3284
(956) 795-4145

eChalk Contact Information:

eChalk, LLC
28 Broadway, Suite 941
New York, NY 10004
212-809-8400
212-809-8500 (fax)

Ordered Services and Fees. eChalk agrees to provide the District with the following services ("Ordered Services") which are detailed in the Description of Services document. The District agrees to pay eChalk the fees set forth below for the Ordered Services.¹

| Service Description | Units | Quantity | Price per Unit | Year | Total Cost |
|--|-------|----------|----------------|--------------|----------------|
| Standard Email & Web Hosting Services (Eligible for E-Rate Discounts) | | | | | |
| Maintenance | Sites | 30.0 | \$1,425.00 | 1 yr | \$42,750.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 24000.0 | \$6.65 | 1 yr | \$159,600.00 |
| On-Site Training (E-Rate Eligible) * | Days | 8.0 | \$1,425.00 | One-time fee | \$8,550.00 |
| Subtotal for Standard Email & Web Hosting Services | | | | | \$210,900.00 |
| E-rate Discount (based on a reported discount rate of 90%) | | | | | (\$189,810.00) |
| Standard File Storage Services** (Not Eligible for E-Rate Discounts) | | | | | |
| Maintenance | Sites | 30.0 | \$75.00 | 1 yr | \$2,250.00 |
| User Accounts (Students, Teachers, and Staff) | Users | 24000.0 | \$0.35 | 1 yr | \$8,400.00 |
| On-Site Training (E-Rate Eligible) * | Days | 8.0 | \$75.00 | One-time fee | \$450.00 |
| Subtotal for Standard File Storage Services | | | | | \$11,100.00 |
| Total Cost | | | | | \$222,000.00 |
| Total Cost to Laredo ISD | | | | | \$32,190.00 |

*On-site email administrator training is provided during setup to those individuals responsible for maintaining the eChalk system. This is not end-user training.

**eChalk has attributed 5% of the costs of its system to the file storage component which is not eligible for E-rate discounts.

Service Start Date: 7/1/2005
Service End Date: 6/30/2006¹

On behalf of the District:

Signature

Name

Title

On behalf of eChalk:

Signature

Daniel C. Watts

Name

Chief Operating Officer

Title

¹In the event of a conflict among the Master Services Agreement, the Service Order(s), and any terms and conditions contained in any purchase order issued by the District, the order of priority for purposes of interpretation shall be the Master Services Agreement and then this Service Order. Any terms and conditions contained in a purchase order issued by the District shall not be controlling.

²Such amount does not include sales, value added or similar taxes of any nature. The District shall pay applicable taxes when invoiced by eChalk or shall supply appropriate tax exemption certificates in a form satisfactory to eChalk.

³This Service Order shall renew for additional one (1) year terms upon mutual written agreement of both parties.

E-rate Contingency: Both parties acknowledge and agree that the District's obligation to purchase the services set forth in this Service Order is contingent upon the Schools and Libraries Division of the Universal Service Administrative Company issuing to the District a Funding Commitment Decision Letter in support of the purchase of those services. Accordingly, eChalk shall delay the delivery of such services upon request by the District until the District requests delivery pursuant to its receipt of E-rate funding support.

eCHALK MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT, made as of 1-20-2003 ("Effective Date"), by and between eCHALK, LLC ("eChalk") with its principal offices at 26 Broadway, Suite 941, New York, NY 10004 and Laredo ISD (the "District") with its principal offices at 1701 Zaragoza Street, Laredo, TX 78040 sets forth the mutual understandings of eChalk and the District with respect to the delivery by eChalk and the purchase by the District of the Web-based communication services as set forth in the then current service order (each a "Service Order" and collectively, the "Service Orders"), the first of which is attached hereto (the "Services"). The "Agreement" between the parties shall consist of the terms and conditions set forth in this Master Services Agreement, the Service Orders, the Service Level Agreement (which will either be attached to this Agreement or can be found on the eChalk website, and may be amended from time to time by eChalk) and any other agreements attached hereto or subsequently signed by the parties and that reference this Master Services Agreement (collectively, the "Agreement"). In the event of any conflict between the terms and conditions of this Master Services Agreement and any subsequent agreement between the parties, the Master Services Agreement shall take precedence.

1. License.

- 1.1 Grant. eChalk hereby grants to the District a non-exclusive, non-transferable, limited license to use the Services for the Term (as defined below), subject to the terms and conditions set forth in this Agreement. eChalk hereby grants to the District the right to permit Users (as defined below) to use the Services in accordance with the terms of the District's permitted use under the Agreement.
- 1.2 Limitations to Grant. Except as set forth herein or in any attachment to this Agreement, the District shall not use the Services in any manner to provide Web-based communication Services to any third party, nor shall the District sublicense, transfer or distribute the Services, or any portion thereof, to any third party.
- 1.3 Reservation of Rights. eChalk reserves all other rights to the Services, including without limitation the right to access and modify the Services for training, maintenance, upgrades, and security purposes.

2. Set-up.

- 2.1 eChalk's Responsibilities. eChalk shall set up and deliver to the District the Services for launch in the number of schools in the District set forth in the Service Order (the "Schools") on a date mutually agreeable to the parties.
- 2.2 The District's Responsibilities. The District shall provide eChalk with all information needed to develop and launch the Services and shall assign a "Site Manager" who shall be responsible for coordinating the set-up of the Services.

3. Proprietary Rights.

- 3.1 District Property. The Service shall allow the District and the District's administrators, teachers, students, and the parents or legal guardians of District students for the Schools (collectively the "Users") to post User information and content on the District's and School's eChalk Websites (collectively the "District Property"). The District shall retain all rights to the District Property.
- 3.2 eChalk's Property. Except for the District Property, all aspects of the Services, in whole and in part, including but not limited to the look and feel of the eChalk template pages, all eChalk source code, and all intellectual property and/or proprietary rights therein, including without limitation, copyright, moral rights, patent rights (including patent applications and disclosures), trademarks, rights of priority, publicity rights, and trade secret rights, recognized in any country or jurisdiction in the world, are the sole and exclusive property of eChalk ("eChalk Property"). The eChalk Property shall include all changes and additions to the Services and all derivative works thereof.
- 3.3 Proprietary Notices. The District shall not delete or in any manner alter the copyright, trademark, or other proprietary notices of eChalk and its licensors, if any, appearing on the Services as delivered to the District. The District shall reproduce such notices on all copies it makes of the Services.
- 3.4 Obligation to Protect. The District shall use reasonable efforts to protect eChalk's proprietary rights to the Services and to cooperate in eChalk's efforts to protect its proprietary rights. The District promptly shall notify eChalk of any known or suspected breach of eChalk's proprietary rights to the Services that may come to the attention of the District.

4. User Information. eChalk shall not disclose to any third party any personal information that would permit identification of an individual, without obtaining the prior written consent of the District, or if eChalk's reasonable judgment it is required by law, the permission of any other party, unless so required by a court or administrative authority of competent jurisdiction. eChalk reserves the right, in accordance with applicable law, to disclose aggregate usage, demographic, and other information relating to usage by the Schools or the District and its Users of the Services for the purpose of: (i) improving the product; (ii) informing the

District and any school(s) of their use of the Services to improve adoption of the Services within the District or any School; or (iii) demonstrating usage of the Services to other schools (potential clients) and eChalk investors. The District hereby grants eChalk the right to use quotes from District or any School faculty and staff regarding the Services for the limited purpose of marketing and public relations. However, eChalk shall not publish any press releases regarding the District or any School's use of the Services or quotes from the District or any School faculty or staff without obtaining the prior written consent of the District. eChalk has adopted and conducts its business in accordance with a privacy policy with respect to the use of personal information. The eChalk privacy policy is available on-line at the following URL: www.echalk.com/privacy_policy.html.

5. Payment. The District hereby agrees to pay eChalk the amounts set forth in the Service Order. Payment shall be made to eChalk within (30) days of the invoice date. All overdue payments will bear interest at the rate of 10% per annum or at the maximum rate allowable by law, whichever is lower.

6. Users.

- 6.1 Acceptable Use. Before launch of the Services, the District shall be responsible for adopting reasonable guidelines regarding use of the Services in the form of an "Acceptable Use Policy" that contains restrictions and obligations upon Users that encourage proper use and censure activities that violate applicable laws and regulations and as of the launch date shall make available to all Users such Acceptable Use Policy on the District's and the School's eChalk Websites. Upon request, eChalk shall provide the District with guidelines to assist the District in developing its own Acceptable Use Policy.
- 6.2 User Behavior. The District hereby acknowledges and agrees that eChalk is not responsible for monitoring use of the Services and/or for enforcing compliance with the Acceptable Use Policy and all applicable laws and regulations. The District shall maintain during the Term hereof reasonable insurance protection for claims arising out of Users' use of the Services.

7. Compliance by Schools. The District shall cause each of the Schools to be bound by and to comply with the terms and conditions of this Agreement.

8. Representations. Each of eChalk and the District represents and warrants that:

- (a) Such party has, and will have, the full power, authority and legal right to enter into and perform fully its obligations under this Agreement;
- (b) Neither the execution and delivery of this Agreement nor the consummation of transactions contemplated hereby will (i) violate any provision of the charter or by-laws of such party, or any laws, ordinances, rules, regulations, codes or policies to which such party is subject or (ii) conflict with, result in breach or violation of, constitute a default under, or require any notice under any agreement to which such party is party or by which it is bound or to which any of its assets is subject;
- (c) Such party shall comply at its own expense with all applicable laws, ordinances, rules, regulation, codes and policies in connection with its performance under this Agreement; and
- (d) Such party has all rights and authorizations necessary to grant the rights and licenses set forth herein.

9. Term; Termination.

- 9.1 Term. This Master Services Agreement shall become effective as of the Effective Date and shall remain in force until terminated.

9.2 Termination.

- (a) This Master Services Agreement may be terminated by either party, at any time if the other party commits a material breach of this Agreement that remains uncured for a period of thirty (30) days following written notice thereof.
- (b) eChalk may terminate this Master Services Agreement upon thirty (30) days' prior written notice to the District (i) if the District fails to pay any amounts owed to eChalk when due, or (ii) at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is obligated to pay eChalk fees for the Services to be provided.
- (c) The District may terminate this Master Services Agreement upon thirty (30) days' prior written notice to eChalk at any time when the parties have not entered into a Service Order or other agreement pursuant to which the District is bound to pay eChalk fees for the Services provided. The District intends to remit all payments set forth in this Agreement and any Service Order for the full term of the Agreement and/or Service Order if funds are legally available. The District fully intends to do all things legally within its power to obtain and maintain funds from which payments may be made in accordance with this Agreement. Notwithstanding the foregoing, in the event that sufficient funds

are not appropriated to continue this Agreement for any fiscal year of the District, the District shall have the right to terminate this Agreement on the last day for the fiscal year for which appropriations were received without penalty or expense to the District, provided the District provides eChalk with thirty (30) days written notice.

(d) This Master Services Agreement may be terminated at any time by mutual, written agreement of eChalk and the District.

10. **Disclaimer Of Warranty.** The District hereby agrees and acknowledges that the Services are provided on an "as is" basis without any express or implied warranty, guarantee, or other assurance of quality, conformity with specifications, reliability or functionality by any eChalk Party (as defined below). eChalk makes no representation or warranty as to the success of the District's or any of the Schools' use of the Services. "eChalk Party" means eChalk or any of its directors, officers, employees, agents, contractors, affiliates, information providers, licensors, governmental authorities or other suppliers providing any data, information, news, messages, opinions or other materials relating to the Services. EXCEPT AS SET FORTH IN SECTION 8, ECHALK HEREBY DISCLAIMS WITH RESPECT TO THE SERVICES, UPDATES, ENHANCEMENTS OR OTHER PRODUCTS OR SERVICES PROVIDED OR CONTEMPLATED HEREUNDER ALL WARRANTIES OF ANY NATURE, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

11. **Limitation Of Liability.**

11.1 **Acts or Omissions by the District, the Schools and its Users.** The District hereby releases eChalk from all obligations and liability relating to any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from or relating to (i) the District's, Schools' or Users' use of the Services and/or (ii) the District's or the Schools' conduct of its business.

11.2 **eChalk's Liability.** The District agrees that no eChalk Party shall be liable in any way to the District or any School, any User or any other person for any claims, demands, liabilities, obligations, taxes, losses, fines, costs, expenses, royalties, litigation, deficiencies or damages arising from: (i) any inaccuracy, error or delay in, or omission of, or any interruption of the transmission or delivery of, the Services, in each case; or (ii) any party's inability to use the Services or any other computer software or hardware; or (iii) any party's action or failure to act in accordance with the Acceptable Use Policy or any applicable laws, regulations or policies regarding the Services.

11.3 **Damages.** The District agrees that eChalk shall not be liable for any consequential, special, incidental, indirect, or punitive damages, even if eChalk has been advised of the possibility of such damages and regardless of whether such damages were or reasonably could have been foreseen. Notwithstanding the foregoing, eChalk shall be liable to the District for any loss to the extent it is directly attributable to the gross negligence or willful misconduct of any eChalk Party. In no event shall eChalk's total cumulative liability to the District and to the Schools collectively, exceed the maximum amount paid by the District to eChalk under the Service Order.

12. **Service Orders.** Each Service Order shall be subject to the following terms and conditions in addition to any other terms and conditions set forth in the Service Order.

12.1 **Changes to Service Orders.** During the term of a Service Order, the District shall have the right to request changes to the ordered services, the number of Schools at which the Services will be offered and the number of user subscriptions. eChalk shall, within a reasonable time not to exceed four (4) business days after receipt of a written change proposal, inform District of the cost of the proposed changes. Any such agreement regarding additional or different services, schools, user subscriptions and compensation shall be set forth in a signed, written amendment to the Service Order or a Law Service Order.

12.2 **Termination of Service Orders.** A Service Order may be terminated at any time by mutual written agreement by eChalk and the District. If either party fails to cure any breach of its obligations to a Service Order within thirty (30) days following receipt of written notice thereof from the other party, then such other party may terminate the Service Order by providing the defaulting party with written notice of termination. eChalk may terminate a Service Order upon prior written notice if the District fails to pay the amounts due thereunder within thirty (30) days of receipt of an invoice.

12.3 At any time when a Service Order is not in force eChalk shall be under no obligation to provide Services until the parties enter into a new Service Order or other binding agreement pursuant to which the District is obligated to pay eChalk for Services.

13. **Governing Law; Jurisdiction.** This Agreement shall be construed and governed by the laws of the State of Texas without regard to conflict of law principles. The parties hereby consent to jurisdiction and venue in any federal or state court of

competent jurisdiction located in the County of Webb, State of Texas, for the adjudication of any disputes under this Agreement.

14. **Notice.** All notices in connection with this Agreement shall be deemed given as of the day they are sent by electronic transmission, fax or commercial courier to the other party at such address or fax number as set forth in the then current Service Order.

15. **Further Assurances.** The parties shall, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by the other party, to confirm and ensure the parties' respective rights and interests contemplated by or provided in this Agreement. The parties shall act in good faith in the performance of their obligations under this Agreement.

16. **Force Majeure.** Performance of any obligation hereunder shall be excused so long as prevented by an act of God, act of public enemy, fire or other casualty, labor dispute, electrical shortage, failure of communications or common carrier, equipment or software malfunction or other circumstances reasonably beyond a party's control and that it cannot circumvent using its best efforts ("Force Majeure"). Any party so delayed in its performance immediately shall attempt to notify the other party and shall describe at a reasonable level of detail the Force Majeure circumstances causing such delay. Upon delivery of such notice, the obligations of the party giving such notice, to the extent affected by the Force Majeure event, shall be suspended during, but not longer than, the continuance of the Force Majeure event.

17. **Severability.** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

18. **Modifications.** This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

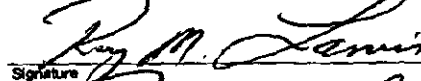
19. **No Joint Venture.** Nothing in this Agreement shall constitute either of the parties as members of any partnership, joint venture, association or similar entity.

20. **Assignment.** Except as otherwise set forth herein, the District may not assign any of its rights or delegate any of its duties or obligations under this Agreement to any third party without the written consent of eChalk except to an affiliate or pursuant to any merger or consolidation. eChalk may assign its rights or delegate its duties or obligations under this Agreement freely. This Agreement shall inure to the benefit of the parties and their respective successors and permitted assigns.

21. **Survival.** Sections 3.1, 3.2, 4, 5, 6.2, 8, 10, 11, 13, 14 and this Section 21 shall survive termination or expiration of this Agreement.

The undersigned have acknowledged and agreed to the foregoing terms as of the date first written above:

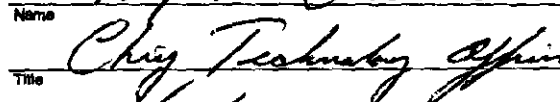
On behalf of the District:



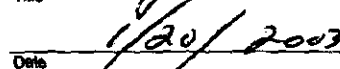
Signature



Name



Title



Date

On behalf of eChalk:



Signature



Name



Title



Date

EXHIBIT B



Competitive Bidding

Catriona Ayer

Train-the-Trainer Workshop
September 27-29, 2004
Schools & Libraries Division

Contracts

- ◆ The 5th Report and Order requires that all contracts be signed and dated by both parties. Contracts must be signed before the application is filed.
- ◆ Quotes are not contracts.
- ◆ If PIA asks for contracts and something else is provided (such as a PO), then applicants must be prepared to prove such a document constitutes a contract pursuant to state contract law.

EXHIBIT C



**E-rate from the Service
Provider Perspective
Cynthia Schultz**

**Train-the-Trainer Workshop
September 27-29, 2004
Schools & Libraries Division**

CONTRACT REQUIREMENTS

- ◆ FCC Rules require applicant to sign a contract prior to the filing of a Form 471. 47 C.F.R. §54.504(c).
- ◆ The FCC Fifth Report and Order requires both the applicant and service provider to sign the contract prior to the filing of a Form 471.
 - This rule does not apply to non-contracted tariffed or month-to-month services.
 - Verbal agreements are not acceptable.
 - Quotes are not acceptable.
 - Purchase orders are acceptable if considered a contract pursuant to state and local procurement laws and state contract laws.

CONTRACT REQUIREMENTS

- ◆ Applicant must provide signed and dated contracts for reviews and audits.
 - Applicant must be prepared to prove its contract meets the requirements of state contract law.
- ◆ Applicant certifies that it has signed a contract on its Form 486.

EXHIBIT D



Rate for Beginners

John Noran

Schools and Libraries Division
Universal Service Administrative Company

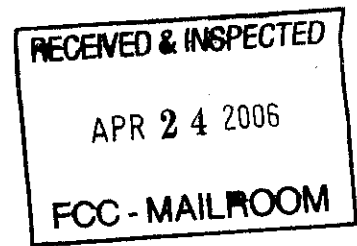
Train-the-Trainer Workshop

September 27-29, 2004

Contract Requirements

- ◆ FCC Rules require applicant to sign a contract prior to the filing of a completed Form 471.
47 C.F.R. §54.504(c).
- ◆ Fifth Report and Order requires both the applicant and service provider to sign the contract prior to the filing of a Form 471.
 - This rule does not apply to tariffed or month-to-month services.
 - Verbal agreements are not acceptable.
 - Quotes are not acceptable.

EXHIBIT E



Date 4/20/2006

Federal Communications Commission
Washington, D.C. 20554

To Whom it May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 04-1981-02A on 2/7/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/7/2005, it was considered fully executed and awarded.

Sincerely,

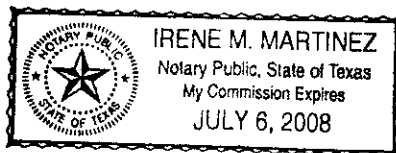
Mard A. Herrick
Superintendent

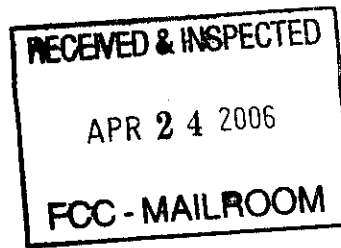
STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on 20th day of April, 2006 by Mard A. Herrick.

Notary Public, State of Texas





April 19, 2006

Federal Communications Commission
Washington, D.C. 20554

To Whom it May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 04-1972-03A on 2/2/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/2/2005, it was considered fully executed and awarded.

Sincerely,

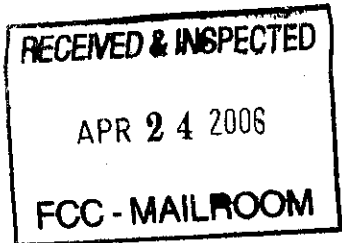
Herbert Berg
Superintendent

STATE OF South Carolina COUNTY OF Kershaw
Acknowledged before me this date 4/19/06 NOTARY NAME Harriett M. Hailey
My Commission Expires 3/22/11 NOTARY SIGNATURE Harriett M. Hailey



LAREDO INDEPENDENT SCHOOL DISTRICT

1702 Houston St. • Laredo, Texas 78040 • Ph. 956 795 3254 • Fx. 956 795 3253
E-mail: jamezcua@laredoisd.org



Jesus J. Amezcua, CPA
Chief Financial Officer

Daniel García, Jr., Ph.D.
Superintendent of Schools

Board of Education

Dr. Dennis D. Cantu
President

John Peter Montalvo
Vice President

George M. Beckelhymer
Secretary

Jesus Justo Guerra
Parliamentarian

Members

Guillermina Montes

Jorge L. Rodriguez

Jose A. Valdez

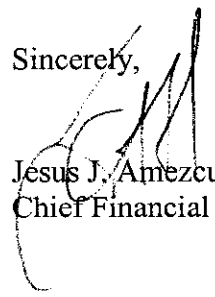
April 19, 2006

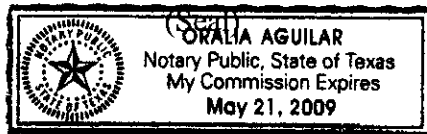
Federal Communications Commission
Washington, D.C. 20554

To Whom It May Concern:

This letter verifies that I did in fact sign the eChalk Service Order # 03-1656-18A on 2/7/2005, the 'Effective Date' at the top of the Service Order. Mr. Daniel Watts' signature was already on the document. Upon signing this document on 2/7/2005, it was considered fully executed and awarded.

Sincerely,


Jesus J. Amezcua, CPA
Chief Financial Officer



Attest:


Notary Public Signature